

States
of Jersey



JFSC

ANTI-MONEY LAUNDERING/ COUNTERING THE FINANCING OF TERRORISM STRATEGY GROUP

**CONSULTATION PAPER
NO. 1 2008**

REGISTRATION AND MONITORING OF NON-PROFIT ORGANISATIONS

**Proposals to enhance the Island's legislative framework to
counter the use of non-profit organisations in terrorism**

CONSULTATION PAPER

The Anti-Money Laundering/Countering the Financing of Terrorism Strategy Group (“AML/CFT Strategy Group”) invites comments on this consultation paper.

Responses may be sent directly to Andrew Le Brun at the AML/CFT Strategy Group Secretariat. If you require any assistance, clarification or wish to discuss any aspect of the proposal prior to formulating a response, it is of course appropriate to contact the AML/CFT Strategy Group Secretariat. The contact details are:

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**All comments should reach the AML/CFT Strategy Group by
8 February 2008**

**It is the policy of the AML/CFT Strategy Group to make the content of
all responses available for public inspection unless specifically
requested otherwise.**

CONSULTATION PAPER

Contents

Contents 4

1 Executive Summary 5

2 Consultation 10

3 The AML/CFT Strategy Group 11

4 Background 12

5 Detailed Proposals 15

6 Cost Benefit Analysis 23

7 SUMMARY OF QUESTIONS 24

APPENDIX A List of representative and other bodies who have been sent this consultation paper. 25

APPENDIX B FATF Special Recommendation VIII – Interpretative Note 26

Appendix C Draft Non-Profit Organizations (Jersey) Law 200- 31

1 Executive Summary

INTERNATIONAL STANDARDS

- 1.1 The International Monetary Fund (the “IMF”) will visit Jersey in October 2008. The purpose of this visit is to assess the Island against the international standards set by the Financial Action Task Force (the “FATF”), as well as against international standards for the banking, insurance and securities sectors. The IMF will rate Jersey’s anti-money laundering/countering the financing of terrorism (“AML/CFT”) framework against the requirements of the FATF Recommendations¹. Any deficiencies in the framework will impact the rating that Jersey will receive against these international standards.
- 1.2 It is likely that Jersey’s status as an international finance centre will focus the spotlight on its ability to measure up to the standards set by the FATF. Failure to apply FATF standards could result in Jersey failing to be considered as an equivalent jurisdiction for AML/CFT purposes, e.g. by the European Union (“EU”), which could have adverse consequences for the Island’s economy.
- 1.3 In response to the threat of terrorist financing, the FATF has issued 9 Special Recommendations, one of which - Special Recommendation VIII (“SR VIII”) - sets out measures that jurisdictions should take to address the concern that non-profit organisations (“NPOs”) can be vulnerable to abuse by those who seek to finance terrorists².
- 1.4 The Island’s Government, through a public commitment of the Chief Minister, has committed Jersey to introducing domestic measures to meet the FATF Recommendations.

COMMON CHARACTERISTICS OF A NPO

- 1.5 The FATF defines a NPO as: *“a legal entity or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of ‘good works’”*³.
- 1.6 Traditionally, the term has also been understood to represent a body:
 - 1.6.1 that raises and applies funds for its own purpose - rather than for the benefit of those that own and control the body; and
 - 1.6.2 that is intended to benefit either the community at large or sections of the community, including members of the NPO.

¹ The FATF has issued 40 Recommendations and 9 Special Recommendations, which were last updated in October 2004.

² For the Interpretative Note to SR VIII see Appendix B of this paper. Further guidance can be found in the FATF Methodology which can be viewed online at: www.fatf-gafi.org/dataoecd/14/53/38336949.pdf

³ Note that, although a trust is not a legal entity, a NPO established as a Jersey trust would fall within the “organisation” category of the FATF definition.

- 1.7 Many NPOs do not operate to generate a profit. However, a NPO may accept, hold and disburse money and other things of value. It may also legally and ethically trade at a profit.
- 1.8 Many NPOs will be run by volunteers or unpaid staff.

VITAL ROLE OF NPOS

- 1.9 Whilst NPOs may be vulnerable to those who wish to misuse them to finance terrorism, it is also important to recognise the vital role that NPOs play in the economy. This is particularly true in Jersey, where there is a strong history of charitable giving and voluntary activity.
- 1.10 SR VIII recognises that measures taken to protect the NPO sector from terrorist abuse should not disrupt or discourage legitimate charitable activities. It is intended that proposals contained in this paper should not disrupt or discourage the good work that takes place in Jersey.

IMPLEMENTATION OF SR VIII

- 1.11 It is evident that the FATF definition of a NPO (as set out at 1.5) encompasses a broad range of activities, including charitable activities. It is also intended to include those organisations that do actually make a profit from being primarily engaged in raising or disbursing funds for the purposes listed, despite being described as non-profit making.
- 1.12 The Interpretative Note to SR VIII sets out what the FATF considers to be an effective approach for countries to take in order to identify, prevent and combat the terrorist misuse of NPOs. An effective approach is considered to be one which includes the following four elements:
 - 1.12.1 Outreach to the NPO sector concerning terrorist financing issues.
 - 1.12.2 Supervising and monitoring of the NPO sector.
 - 1.12.3 Effective information gathering and investigative powers in relation to NPOs.
 - 1.12.4 The ability to respond to international requests for information about NPOs of particular concern.
- 1.13 In addition, SR VIII provides for an assessment to be conducted of the NPO sector and/or for a jurisdiction to have the ability to obtain timely information on the activities, size and other relevant features of the sector. Currently, no single Island agency has access to all of this information.
- 1.14 This consultation paper sets out the key policy proposals that the AML/CFT Strategy Group intends to implement in order to address SR VIII and provides interested parties with draft legislation for consideration - the Non-Profit Organizations (Jersey) Law 200- (the “**draft NPO Law**”).

- 1.15 It is intended that the oversight model in Jersey for NPOs will be “risk-based”. This means that resources will be directed to overseeing NPOs that are more likely to assist or be used to assist terrorism. This is in line with SR VIII, which clearly indicates that supervision and monitoring should focus on “... *those NPOs which account for a significant portion of the financial resources under control of the sector and a substantial share of the sector’s international activities*” (i.e. both elements must apply). The effect of the approach outlined in this paper will be to focus attention on significant NPOs that raise funds in Jersey and which disburse those funds outside the Island.
- 1.16 References in this paper to NPOs that present a “lower” risk (or otherwise) are intended to mean the risk that a NPO may assist or be used to assist terrorism.

WHAT IS PROPOSED IN THIS PAPER?

- 1.17 It is proposed to require all NPOs established in, or administered in or from Jersey, to register with the Jersey Financial Services Commission (the “**Commission**”). The Commission has been requested to undertake this role (along with an obligation to monitor the NPO sector) by the AML/CFT Strategy Group - in line with the general presumption of the Council of Ministers against establishing a new statutory body in Jersey on economic grounds.
- 1.18 As part of the registration process, NPOs will be required to provide relevant information about the NPO. Whilst only very basic information will be requested from “lower” risk NPOs, other NPOs will be required to provide financial information at the time of registration and thereafter on a periodic basis. Most of the information that is collected will be held privately by the Commission on a central record.
- 1.19 The draft NPO Law will also provide the Commission with the power to request additional information, and the Commission’s role will be to monitor the activity of the NPO sector, in order to help determine if a NPO is assisting or being used to assist terrorism.
- 1.20 A Ministerial Order will set out NPOs and classes of NPOs that are to be considered to present a “lower” risk. Given the wide definition of NPO in SR VIII, it is expected that a number of classes of NPOs will be covered by such an Order.
- 1.21 Where the Commission has reasonable grounds for suspecting that a NPO is assisting or being used to assist terrorism, then it must disclose that suspicion to the Attorney General.
- 1.22 NPOs will be required to keep financial records and to retain those records for a period of at least five years.
- 1.23 The draft NPO Law also clarifies the application of the Terrorism (Jersey) Law 2002 (the “**Terrorism Law**”), Terrorism (United Nations Measures) (Channel Islands) Order 2001, and Al-Qa’ida and Taliban (United Nations Measures) (Channel Islands) Order 2002 to NPOs.
- 1.23.1 The draft NPO Law makes it clear that, whatever legal form a NPO takes, it will be possible to prosecute a NPO for an offence that is committed under the Terrorism Law and the above Orders.

1.23.2 The draft NPO Law also clarifies how the existing obligation to report knowledge or suspicion that an offence has been committed under Articles 15 to 18 of the Terrorism Law (see 4.8) applies to unpaid and volunteer workers of NPOs.

1.24 As the Attorney General is already able to respond to requests for assistance from other jurisdictions, by virtue of the provisions contained in the Criminal Justice (International Co-operation) (Jersey) Law 2001, this paper contains no proposals to add to existing cooperation powers.

1.25 It is important to note that the proposals set out in this paper are solely concerned with combating terrorist activities. They do not extend to the regulation of the general activities of charities⁴.

“OUTREACH”

1.26 This paper is also intended to start “outreach” by highlighting the use of NPOs in terrorist financing. It is likely that additional information will be published in due course and training seminars run to highlight terrorist issues. It is hoped to work closely with the Association of Jersey Charities in this respect.

1.27 Outreach will also encourage the adoption by NPOs of policies to promote ongoing transparency, integrity and public confidence in the NPO sector. It is expected that NPOs will:

1.27.1 have appropriate controls in place to ensure that all funds are fully accounted for and are spent in a manner that is consistent with the purpose and objectives of the NPO’s stated activities;

1.27.2 follow a “know your beneficiaries” rule, which means that each NPO should make best efforts to confirm the identity, credentials and good standing of the recipient of funds that are raised; and

1.27.3 undertake best efforts to document the identity of significant donors, whilst respecting donor confidentiality.

DOMESTIC REVIEW OF THE NPO SECTOR

1.28 Information that is collected by the Commission at the time of registration of NPOs, and periodically thereafter, will assist in a review of the NPO sector in Jersey, which will seek to identify any particular features and types of NPOs, that, by virtue of their activities or characteristics, are at risk of being used to assist terrorism.

1.29 This review, which will be ongoing, will be informed, to the extent that is possible, by input from other agencies that hold information on NPOs. Input will be in the form of a summary or collection of information, and not relate to any particular NPO. For example, it is known that:

⁴ On this subject, readers may be interested in the proposals of the Jersey Law Commission for a Jersey Charities Commission.

- 1.29.1 The Association of Jersey Charities has just over 200 members, details of which are published on:
<http://www.thisisjersey.com/ajc/code/ajcpage.pl?Autoincrement=000001>.
- 1.29.2 The Comptroller of Income Tax is aware of some 1,000 charities that enjoy tax exempt status.
- 1.29.3 Gambling Control issues around 200 permits each year to charities, associations, and clubs - to run lotteries and bingo.

WHO WOULD BE AFFECTED BY THE PROPOSALS?

- 1.30 The proposals set out in this paper will directly affect all NPOs that are established in, or administered in or from Jersey. This includes:
 - 1.30.1 Charitable organisations, such as Jersey Hospice Care and Headway.
 - 1.30.2 Religious organisations such as churches.
 - 1.30.3 Cultural organisations, such as the Jersey Arts Centre and the Jersey Eisteddfod.
 - 1.30.4 Educational organisations, such as ACET and Beaulieu Convent School Trust.
 - 1.30.5 Social bodies, such as sports and youth clubs.
 - 1.30.6 Fraternal organisations, such as the Good Companions Club and the Jersey Roundtable.
 - 1.30.7 Others carrying out other types of “good works”, e.g. Durrell Wildlife Conservation Trust and Jersey Fairtrade Island Group.

2 Consultation

- 2.1 The AML/CFT Strategy Group has issued this consultation paper and invites comments in writing from interested parties on the proposals set out herein. Where an industry body or association makes comments, that body or association should also provide a summary of the type of individuals and/or institutions that it represents.
- 2.2 To assist in analysing responses to the consultation paper, respondents are asked to:
 - 2.2.1 prioritise comments and to indicate their relative importance; and
 - 2.2.2 respond as specifically as possible and, where they refer to cost implications, to quantify those costs.
- 2.3 Any person wishing to respond to the proposals set out in this consultation paper should note that the comments must be with the AML/CFT Strategy Group Secretariat **by 5:30pm on 8 February 2008**.
- 2.4 The consultation period is necessarily limited. This is because it is important that the Island is able to demonstrate that the draft NPO Law is being effectively implemented by the time that the IMF visit Jersey in October 2008.
- 2.5 Feedback received from this consultation process will be taken into account in the finalisation of the draft NPO Law by the AML/CFT Strategy Group. So too will the results of a review of the draft NPO Law for compliance with the Human Rights (Jersey) Law 2000 (to be conducted by the Law Officers' Department) and final review of the draft NPO Law by the Law Draftsman's Office.
- 2.6 It is intended to lodge the draft NPO Law au Greffe on 19 February 2008 for debate by the States of Jersey ("**States**") on 1 April 2008. Taking the need for Privy Council approval into account, it is hoped that the draft NPO Law will be in force by July 2008, and that the registration process will be complete by October 2008.

3 The AML/CFT Strategy Group

- 3.1 The AML/CFT Strategy Group was established in Jersey in early 2007 and is chaired by the Chief Executive of the States. The Commission provides the secretariat for the group.
- 3.2 The group comprises officers from the following Government departments and agencies: the Chief Minister's Department, the Economic Development Department, the Law Officers' Department, the Joint Financial Crimes Unit, the Commission, and the Shadow Gambling Commission.
- 3.3 The purpose of the AML/CFT Strategy Group is to provide a forum for the Island agencies represented on the group to liaise, discuss and develop coordinated strategies and policies to enhance Jersey's capability to prevent and detect financial crime and terrorist financing.
- 3.4 During 2007, the AML/CFT Strategy Group published three consultation papers with proposals to update Jersey's AML/CFT framework. Previous consultation papers issued by the group may be found on the following webpage: <http://www.gov.je/ChiefMinister/International+Finance/Consultationonmoneylaunderingandcounteringterrorism.htm>.

4 Background

THE FUNDING OF TERRORISM

- 4.1 Internationally, NPOs are potentially vulnerable to those who seek to finance terrorists. This is because NPOs generally enjoy the public's trust, often have access to considerable funds, and are often cash-intensive. In addition, some NPOs have a global presence that provides a framework for national and international operations and financial transactions. Often these are near or within areas that are most exposed to terrorist activity.
- 4.2 Although, to date, there have been no known cases of Jersey-based NPOs being used by persons seeking to finance terrorist activity, the experience of law enforcement and intelligence agencies in the United Kingdom (the "UK")⁵ indicates that NPOs with certain characteristics are more vulnerable than others. In particular, they have identified that the risk of abuse is greater where the NPO:
- 4.2.1 is closely aligned to particular religious or cultural movements;
 - 4.2.2 frequently moves funds or other resources to areas of conflict or unrest around the world;
 - 4.2.3 passes funds to other organisations based overseas rather than deliver services directly;
 - 4.2.4 deals exclusively in cash or alternative remittance systems where no formal banking infrastructure exists; or
 - 4.2.5 has extremely complicated financial records in which suspicious transactions are less easy to identify.
- 4.3 Internationally, it is known that terrorist organisations have taken advantage of these characteristics of NPOs to infiltrate the sector and misuse NPO funds and operations to cover for, or support, terrorist activity. One example of a NPO known to have been misused for terrorist purposes is given by the FATF in its Interpretative Note to SR VIII.
- 4.3.1 The NPO solicited donations from local charities in a donor region, in addition to fund raising efforts conducted at its headquarters in a beneficiary region, falsely asserting that the funds collected were destined for orphans and widows.
 - 4.3.2 In fact, the finance chief of this organisation served as the head of organised fundraising for Usama bin Laden.
 - 4.3.3 Rather than providing support for orphans and widows, funds collected by the NPO were turned over to Al-Qa'ida operatives.

⁵ Source: "Review of safeguards to protect the charitable sector from terrorist abuse - a consultation document", UK Home Office, May 2007.

SPECIAL RECOMMENDATION VIII

4.4 In response to the potential vulnerability of NPOs, the FATF issued SR VIII in 2001.

4.5 SR VIII reads as follows:

Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organisations are particularly vulnerable, and countries should ensure that they cannot be misused:

1. *by terrorist organisations posing as legitimate entities;*
2. *to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; and*
3. *to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.*

4.6 In 2006, the FATF issued an Interpretative Note to assist jurisdictions in the practical implementation of SR VIII. The full text of the Interpretative Note is provided as Appendix B.

CURRENT LEGISLATION IN JERSEY TO COUNTER TERRORISM

4.7 The Terrorism Law already has direct relevance to NPOs.

4.8 Articles 15 to 17 of the Terrorism Law make it an offence to: (a) fund-raise for the purposes of terrorism; (b) use and possess property that is used or may be used for the purposes of terrorism; and (c) enter into or become concerned in an arrangement as a result of which property is made available or is to be made available to another, where a person knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism. Article 18 of the Terrorism Law makes it an offence to handle the proceeds of a terrorist offence⁶, which is referred to as “money laundering”. Under Article 18(2) of the Terrorism Law, it is a defence for a person to prove that he or she did not know and had no reasonable cause to suspect that the arrangement related to terrorist property.

4.9 In addition, under Article 20 of the Terrorism Law, there is an obligation to report to an officer of the States of Jersey Police Force or a customs officer actual knowledge or suspicion that another person has committed an offence listed in Articles 15 to 18 of the Terrorism Law, where that knowledge or suspicion arises in the course of a trade, profession, business or employment (except the business of a financial institution⁷). This reporting obligation certainly applies to those NPOs that run their operations on a quasi-commercial basis with paid employees. Under Article 23 of the Terrorism Law, there is a separate obligation to report where knowledge or suspicion, or reasonable grounds for such knowledge or suspicion, arise in the course of the business of a financial institution.

⁶ Entering or being concerned in an arrangement, which facilitates the retention and control by, or on behalf of, another person of terrorist property.

⁷ The business of a financial institution is listed in Schedule 2 to the Proceeds of Crime (Jersey) Law 1999 and includes deposit-taking business, insurance business, and investment business.

4.10 Other laws have been introduced in response to measures taken by the United Nations. The Terrorism (United Nations Measures) (Channel Islands) Order 2001⁸ makes it an offence to collect for, or make funds available to, terrorist organisations, and the Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002⁹ makes it an offence to make funds available to, or for the benefit of, Usama bin Laden, or any person designated by the UN Sanctions Committee as a member of the Al-Qa'ida organisation, Taliban, or an associated individual, group or undertaking. Hereafter, both Orders are referred to as the "**Terrorism Orders**".

⁸ This implements S/RES/1373(2001).

⁹ This implements S/RES/1267(1999).

5 Detailed Proposals

MEASURES TO IDENTIFY, PREVENT AND COMBAT TERRORIST MISUSE OF NPOS

- 5.1 This section deals with proposals to:
 - 5.1.1 implement effective monitoring of the NPO sector; and
 - 5.1.2 ensure that there are effective information gathering and investigation powers in place.
- 5.2 Measures dealing with outreach to the NPO sector, and the Island's capacity to respond to international requests for information about a NPO of concern have been considered in section 1 of this paper.
- 5.3 The full text of SR VIII is attached as Appendix B.

DEFINITION OF A NPO

- 5.4 Article 1(1) of the draft NPO Law defines a NPO as being a person or any body of persons corporate or unincorporated that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of "good works".
- 5.5 Whilst the term "primarily engaged" is not defined, it is the view of the AML/CFT Strategy Group that it:
 - 5.5.1 includes any person or body that is dependent upon raising funds (from the general public, private sector, and public sector) to support the delivery of its objectives (or part of its objectives) (i.e. it could not do what it does without raising funds); and
 - 5.5.2 excludes any charitable giving or support of other "good works" from existing income sources, such as an individual's salary or business profits.
- 5.6 The AML/CFT Strategy Group considers that the definition does not and should not cover fund-raising events where the individual, group of individuals, or business involved is collecting funds on behalf of a charity. This will include dress-down days run by businesses, and collections in shops and public houses.
- 5.7 Nor will the definition extend to charitable trusts that are used extensively in the finance sector and which are established to provide an "orphan" owner for a special purpose vehicle structure, where any charitable giving is funded from existing income sources¹⁰.
- 5.8 A NPO may raise funds to support an objective through (amongst other things):

¹⁰ Where a trustee is conducting trust company business then he, she, or it will be subject to the provisions of the Financial Services (Jersey) Law 1998.

- 5.8.1 solicited and unsolicited donations and grants (however large or small);
 - 5.8.2 collections, e.g. gift days;
 - 5.8.3 lotteries and raffles;
 - 5.8.4 sponsored events, e.g. walks;
 - 5.8.5 entry charges to organised events, e.g. to shows, fetes and dinners; and/or
 - 5.8.6 trading, e.g. jumble sales, and charity shops.
- 5.9 However, it is the view of the AML/CFT Strategy Group that the collection of membership subscriptions that are fixed in a general meeting of members, and which is designed to cover the cost of a NPO's administration and/or specified activities is not considered to be raising funds.
- 5.10 In the case of a sports and social club which is funded exclusively by a sponsoring employer, membership of which is part of a package of benefits that is offered by the sponsoring employer to its employees, it is also the view of the AML/CFT Strategy Group that such funding (in the hands of the sports and social club) is not to be considered to be raising funds.
- 5.11 It is not intended to define what is meant by "charitable" in the draft NPO Law.

REGISTRATION

- 5.12 Article 2 of the draft NPO Law provides that a NPO must register with the Commission if:
- 5.12.1 it is established in Jersey; or
 - 5.12.2 it is administered in or from Jersey,
- whether or not it carries on any activity in Jersey.
- 5.13 It will be an offence under the draft NPO Law to fail to register where there is a requirement to do so. However, this offence will not apply until a period of three months after the draft NPO Law comes into force - in order to provide NPOs with a "window" in which to register with the Commission. So long as an application for registration is made to the Commission within this three month "window", then it will not matter whether or not the Commission has processed that application and entered the applicant on to a register of NPOs.
- 5.13.1 Do you consider that a period of three months provides sufficient time for a NPO to make an application to the Commission and for the Commission to register that NPO? If not, what period do you suggest?**

- 5.14 It is considered appropriate to provide for all NPOs to be registered, since the Island is required to either undertake a review of the NPO sector in Jersey and/or have the capacity to obtain timely information on its activities, size, and other relevant features.
- 5.15 Those persons and bodies that raise or disburse funds in Jersey, but are not established or administered here, will not be subject to a registration requirement in Jersey - on the basis that they will be subject to such an obligation in another jurisdiction.
- 5.16 The terms “established” and “administered” are not defined, but will include:
- 5.16.1 a person or body that is incorporated under Jersey law, e.g. under the Companies (Jersey) Law 1991 or the Loi (1862) sur les teneures en fideicommiss et l’incorporation d’associations, as subsequently amended;
 - 5.16.2 a trust that is governed by Jersey law and/or a trust where trustee(s) are resident in Jersey;
 - 5.16.3 a person or body that is registered under an act of the Royal Court;
 - 5.16.4 a person or body that has an established place of business in Jersey; or
 - 5.16.5 a body of members that meet on a regular basis in Jersey.
- 5.17 Under Article 3 of the draft NPO Law, so long as all of the information that is required (or requested by the Commission) is provided by a NPO (see paragraph 5.22 onwards), then the Commission must register that NPO, except where it is of the opinion that the NPO has or may have terrorist associations, when it must refer the application to the Royal Court.
- 5.18 Whilst the draft NPO Law will allow a registration fee to be charged on application, no fee will be levied on those applying for registration in 2008. Thereafter, it is expected that a nominal registration fee of around £50 will apply to those NPOs that are considered to present other than a “lower” risk (see 5.29 onwards - which sets out the basis for establishing whether or not a NPO may be considered to present a “lower” risk).
- 5.19 Whether or not a periodic administration fee should also be applied to NPOs that register under the draft NPO Law (whether registered in or after 2008) is a matter for further consideration.
- 5.19.1 Do you agree with the proposal to levy - from 2009 - a nominal registration fee on NPOs that are considered to present other than a “lower” risk? If so, do you consider that an amount of around £50 is reasonable?**
- 5.20 Amongst other things, Article 19 of the draft NPO Law provides that, subject to an appeal to the Royal Court, the Commission may deregister a NPO that has persistently failed to provide information when required to do so under the draft NPO Law or has been convicted of an offence under the Terrorism Law or Terrorism Orders.
- 5.21 It is possible a NPO could be “established” under a trust governed by Jersey law or be “administered” by trustee(s) resident in Jersey, but that none of its assets would be

situated in Jersey and its activities would be carried on wholly outside Jersey. Were such a NPO to be involved in terrorist activities, it is conceivable that media comment would focus on the fact that it was a “Jersey trust”. It is impossible to fully mitigate against such potential reputational damage but a further option would be to amend the Trusts (Jersey) Law 1984 to provide that a trust would be invalid if it is a NPO required to be registered under the draft NPO Law and has not been registered.

5.21.1 Do you agree that the Trusts (Jersey) Law 1984 should be amended so that, where a trust that is a NPO is governed by Jersey law, or has trustees resident in Jersey, it would only be valid if registered under the draft NPO Law? If not, please set out why an amendment should not be made.

INFORMATION TO BE PROVIDED ON REGISTRATION

5.22 The policy will be to require the following information to be provided to the Commission under Article 2 of the draft NPO Law - by a NPO at the time of registration:

5.22.1 its name or proposed name;

5.22.2 details as to how it may be contacted if registered;

5.22.3 its purpose, objectives, and intended activities;

5.22.4 its structure or intended structure e.g. is it an unincorporated body, a trust, or an incorporated body; and

5.22.5 a general indication of the funds that it is likely to raise and disburse each year, both within and outside Jersey.

5.23 In addition, where a NPO is considered to present other than a “lower” risk (see 5.29 onwards - which sets out the basis for establishing whether or not a NPO may be considered to present a “lower” risk), then, under Article 2 of the draft NPO Law, in addition to the information set out above, a NPO will also be required to:

5.23.1 Disclose the name and contact details of each person who will control or direct its activities, including those that hold certain offices - to be prescribed in a Ministerial Order. This will include those individuals that preside over or chair the NPO (often referred to as “president” and “chairman”), the secretary, and the treasurer, however referred to.

5.23.2 Present a statement that contains: (i) a detailed breakdown of income and expenditure for its most recently completed accounting period; and (ii) a summary of assets held at the end of that period, where such a statement has been prepared.

5.23.3 Which other officers do you consider may control or direct the activities of a NPO and should be prescribed in a Ministerial Order?

5.24 Following registration, a NPO that presents a “lower” risk (see 5.29 onwards - which sets out the basis for establishing whether or not a NPO may be considered to present a

“lower” risk), will be under an obligation to advise the Commission of any change to the information collected under 5.22. Where a NPO is considered to present other than a “lower” risk, then it will be required to advise the Commission of any change to the information collected under 5.22 and 5.23.1. In both cases, notification must be at the first practical opportunity, or, in any event, within 28 days of the change.

5.25 The draft NPO Law also provides for the Commission to require an applicant (including one that is considered to present a “lower” risk) to provide additional information before registration.

5.26 All information that is collected (before and subsequent to registration) will be held privately by the Commission on a central record, and will not be made available to the public, except for the name of a NPO, its registration number or reference, and how it may be contacted – which will be provided by the Commission on request (and at no cost). In addition, the Commission will be able to provide information:

5.26.1 to the Attorney General, where it considers that a NPO is assisting or being used to assist terrorism; and

5.26.2 to any other person, where it has the agreement of the Minister for Home Affairs (the “**Minister**”)¹¹.

5.27 In practice, the Commission expects that it would request the Minister to agree to the provision of information to the States of Jersey Police Force and also to agencies that are responsible for the oversight of NPOs outside Jersey, e.g. the Charity Commission - the regulator for charities in England and Wales.

5.28 Under Article 9(3) of the draft NPO Law, there will also be a requirement for a NPO, if requested to do so by any person, to provide that person with the same information that has been collected by the Commission - as set out at 5.22 and 5.23.1 above.

5.28.1 Do you agree that the information that is collected by the Commission should be held privately on a central record or do you think that all of the information collected (as set out at 5.22 and 5.23.1) should be available to the public through the Commission? If you think that information held should be available to the public, would you be prepared to pay a fee to access that information - based on the cost of providing such access?

NPOS THAT ARE CONSIDERED TO PRESENT A “LOWER” RISK

5.29 Under Articles 2(6) and 5(7) of the draft NPO Law, a NPO will be considered to present a “lower” risk where it is individually listed, or included in a class of NPO that is listed in a Ministerial Order. The following classes of NPO are likely to be considered to present a “lower” risk.

5.29.1 Irrespective of how and where its funds are raised, a NPO that disburses funds (which may be net of expenses) only to:

¹¹ The Minister may agree generally or specifically, and unconditionally or subject to such conditions as may be stipulated.

- 5.29.1.1 benefit residents of Jersey¹² - since there is no evidence to suggest that there are terrorist groups operating in Jersey;
 - 5.29.1.2 benefit other NPOs that are registered in Jersey¹³ - since there is no evidence to suggest that there are terrorist groups operating in Jersey;
 - 5.29.1.3 deliver a form of public entertainment¹⁴ in or from within Jersey - since there is no evidence to suggest that there are terrorist groups operating in Jersey;
 - 5.29.1.4 invest in and maintain land and immovable property in Jersey - since there is no evidence to suggest that there are terrorist groups operating in Jersey;
 - 5.29.1.5 fund a branch or parent body that is registered as a charity in another part of the British Isles¹⁵ - since that branch or parent will be subject to oversight in another jurisdiction; and/or
 - 5.29.1.6 meet an obligation to make a “share” payment to the Diocese of Winchester, where the NPO is an ecclesiastical parish of the Anglican church - since the Church of England is established under an Act of the UK Parliament.
- 5.29.2 NPOs that are established by a law of the States of Jersey and which are accountable to the States. This will include the Overseas Aid Commission.
- 5.29.3 NPOs that are controlled by a person that is registered as a trust company business under the Financial Services (Jersey) Law 1998.
- 5.29.4 Are there any other characteristics of NPOs that you consider present a “lower” risk? If so, please list those characteristics, giving examples of the type of NPOs that have such characteristics.**

CONTINUING OBLIGATIONS OF NPOS

5.30 Article 5 of the draft NPO Law will provide for NPOs to keep financial records from the time that they register under the draft NPO Law, and then to keep those records for a period of at least 5 years.

5.31 The term “financial records” is defined in Article 1 of the draft NPO Law as follows:

““financial records”, in respect of a NPO, means records of both its domestic and international transactions that are sufficient to verify that the funds and other assets of the NPO have been

¹² Disbursement may be direct, or indirect, e.g. to pay for goods or services to be used by a beneficiary.

¹³ This will include service clubs, such as Lions and Rotary, that raise funds for the benefit of other NPOs.

¹⁴ This will include performances of theatrical and musical societies and agricultural and horticultural shows.

¹⁵ This includes England and Wales, Scotland, and the Isle of Man.

spent in a manner consistent with its purpose, objectives and intended activities as shown in the register;”.

OVERSIGHT BY THE COMMISSION

- 5.32 In addition to maintaining information privately on a central record, Article 6 of the draft NPO Law will provide the Commission with responsibility for helping to determine if a NPO is assisting or being used to assist terrorism. In order to facilitate this, the Commission will have a general power to require - on demand - the provision of financial records.
- 5.33 Except where a NPO is considered to present a “lower” risk, each NPO will also be required to provide the Commission with an annual statement of its income and expenditure and summary of assets held - in a format that will be provided by the Commission.
- 5.34 In practice, the Commission’s oversight role will be focussed on those NPOs that are considered to present other than a “lower risk”. However, the Commission may also consider the risk that is presented by NPOs (or classes of NPOs) that are otherwise exempted by a Ministerial Order - where it is concerned that there is a risk that a particular NPO is assisting or being used to assist terrorism.
- 5.35 Where the Commission forms the view that a NPO is assisting or being used to assist terrorism, it must inform the Attorney General, giving reasons for its suspicion.
- 5.36 In addition, Article 8 of the draft NPO Law will also provide the Commission with a power to publish a statement about a NPO in three circumstances:
- 5.36.1 Where the Commission believes that a NPO should be registered under the draft NPO Law, and where that NPO is not registered.
- 5.36.2 Where the Commission believes that a NPO is holding itself out as being registered in Jersey but it is not registered.
- 5.36.3 Where the Commission believes that a NPO that has registered has failed to comply with requirements that are set in Articles 4 and 5 of the draft NPO Law.

INVESTIGATION AND PROSECUTION OF OFFENCES

- 5.37 Article 5 of the draft NPO Law provides the Attorney General and any member of the States of Jersey Police Force with a general power to require - on demand - the provision of financial records, in order to determine whether or not an offence has been committed under the Terrorism Law or Terrorism Orders. This is in addition to powers that are already available under the Terrorism Law, Terrorism Orders, and other legislation.
- 5.38 The Commission will have no role in the investigation of suspected terrorist offences.
- 5.39 Articles 13(1) to (4) of the draft NPO Law provides that, irrespective of its structure, where an offence has been committed under the Terrorism Law and Terrorism Orders, a NPO may be prosecuted, in addition to any individual connected with the NPO.

5.40 This reinforces the application of existing investigative powers and powers of assistance to NPOs, and makes it absolutely clear that a NPO may be prosecuted in its own right.

OBLIGATION TO REPORT KNOWLEDGE OR SUSPICION OF OFFENCES

5.41 Article 13(5) of the draft NPO Law clarifies the status of those who undertake work for a NPO on a voluntary or unpaid basis, where, as part of that voluntary or unpaid work, they form actual knowledge or suspicion that another person is engaged in the terrorist offences set out in Articles 15 to 18 of the Terrorism Law (see 4.8). Under Article 20 of the Terrorism Law, such voluntary and unpaid workers will be subject to an obligation to report **actual** knowledge or suspicion that another person is engaged in the terrorist offences set out in Articles 15 to 18 of the Terrorism Law (see 4.8).

5.42 This reporting “threshold” is different to that which applies to “financial institutions” that are covered by Schedule 2 to the Proceeds of Crime (Jersey) Law 1999 (“**Proceeds of Crime Law**”). Under Article 23 of the Terrorism Law, individuals that are employed by such institutions must, in addition to reporting actual knowledge or suspicion, report where they have “reasonable grounds” for knowing or suspecting that another person is involved in the terrorist offences set out in Articles 15 to 18 of the Terrorism Law (see 4.8). Under Article 23 of the Terrorism Law, an offence is committed where a “reasonable man” would have made a report, but an individual has not done so – a so called “negligence test”.

5.43 For the avoidance of doubt, it is not intended that such a “negligence test” should apply to paid, unpaid, or voluntary workers of NPOs, except where a NPO conducts an activity of a financial services business that is listed in Schedule 2 to the Proceeds of Crime Law.

6 Cost Benefit Analysis

- 6.1 There are a number of **costs** associated with the proposals set out in this consultation paper:
 - 6.1.1 Where NPOs do not prepare or maintain financial records or do not have adequate controls in place, there would be a cost to those NPOs to adapt their operational practices and policies to meet the requirements set out in the draft NPO Law.
 - 6.1.2 Costs will be incurred by the Commission in establishing and maintaining a register and in carrying out its oversight activities. However, these costs will be minimised through:
 - 6.1.2.1 the adoption of a risk-based approach, where the Commission's focus is on a limited number of NPOs; and
 - 6.1.2.2 the maintenance of a central record of private information, which places the onus on NPOs to respond to requests from the public for certain information.
- 6.2 There are a number of **benefits** associated with the proposals set out in this consultation paper:
 - 6.2.1 The IMF will rate Jersey's AML/CFT framework against the requirements of the FATF Recommendations and any deficiencies in the framework will impact the rating that Jersey will receive against these international standards. The proposals set out in this paper will assist with the Island's rating against SR VIII, which would otherwise be assessed as "non-compliant".
 - 6.2.2 Failure to apply FATF standards could result in Jersey failing to be considered as an equivalent jurisdiction for AML/CFT purposes, e.g. by the EU, which could put the Island's finance sector at a competitive disadvantage, and have adverse consequences for the Island's economy.
 - 6.2.3 Although many NPOs in Jersey will already meet good standards of governance and transparency, the proposals in this consultation paper will assist in the consistent application of standards in Jersey.

7 SUMMARY OF QUESTIONS

REFERENCE	QUESTION
5.13.1	Do you consider that a period of three months provides sufficient time for a NPO to make an application to the Commission and for the Commission to register that NPO? If not, what period do you suggest?
5.19.1	Do you agree with the proposal to levy - from 2009 - a nominal registration fee on NPOs that are considered to present other than a "lower" risk? If so, do you consider that an amount of around £50 is reasonable?
5.21.1	Do you agree that the Trusts (Jersey) Law 1984 should be amended so that, where a trust that is a NPO is governed by Jersey law, or has trustees resident in Jersey, it would only be valid if registered under the draft NPO Law? If not, please set out why an amendment should not be made.
5.23.3	Which other officers do you consider may control or direct the activities of a NPO and should be prescribed in a Ministerial Order?
5.28.1	Do you agree that the information that is collected by the Commission should be held privately on a central record or do you think that all of the information collected (as set out at 5.22 and 5.23.1) should be available to the public through the Commission? If you think that information held should be available to the public, would you be prepared to pay a fee to access that information - based on the cost of providing such access?
5.29.4	Are there any other characteristics of NPOs that you consider present a "lower" risk? If so, please list those characteristics, giving examples of the type of NPOs that have such characteristics.

APPENDIX A

List of representative and other bodies who have been sent this consultation paper.

- The Association of Jersey Charities
- The Jersey Law Commission
- Jersey Finance Limited
- Income Tax Department
- Bailiff's Chambers
- Overseas Aid Commission
- The Dean and other Anglican clergy
- Head of the Roman Catholic Church in Jersey
- Chairman of the District and Superintendent (Methodist Church)

APPENDIX B

FATF Special Recommendation VIII – Interpretative Note

Introduction

1. Non-profit organisations (NPOs) play a vital role in the world economy and in many national economies and social systems. Their efforts complement the activity of the governmental and business sectors in providing essential services, comfort and hope to those in need around the world. The ongoing international campaign against terrorist financing has unfortunately demonstrated however that terrorists and terrorist organisations exploit the NPO sector to raise and move funds, provide logistical support, encourage terrorist recruitment or otherwise support terrorist organisations and operations. This misuse not only facilitates terrorist activity but also undermines donor confidence and jeopardises the very integrity of NPOs. Therefore, protecting the NPO sector from terrorist abuse is both a critical component of the global fight against terrorism and a necessary step to preserve the integrity of NPOs.
2. NPOs may be vulnerable to abuse by terrorists for a variety of reasons. NPOs enjoy the public trust, have access to considerable sources of funds, and are often cash-intensive. Furthermore, some NPOs have a global presence that provides a framework for national and international operations and financial transactions, often within or near those areas that are most exposed to terrorist activity. Depending on the legal form of the NPO and the country, NPOs may often be subject to little or no governmental oversight (for example, registration, record keeping, reporting and monitoring), or few formalities may be required for their creation (for example, there may be no skills or starting capital required, no background checks necessary for employees). Terrorist organisations have taken advantage of these characteristics of NPOs to infiltrate the sector and misuse NPO funds and operations to cover for or support terrorist activity.

Objectives and General Principles

3. The objective of Special Recommendation VIII (SR VIII) is to ensure that NPOs are not misused by terrorist organisations: (i) to pose as legitimate entities; (ii) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; or (iii) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes but diverted for terrorist purposes. In this Interpretative Note, the approach taken to achieve this objective is based on the following general principles:
 - a. Past and ongoing abuse of the NPO sector by terrorists and terrorist organisations requires countries to adopt measures both: (i) to protect the sector against such abuse, and (ii) to identify and take effective action against those NPOs that either are exploited by or actively support terrorists or terrorist organizations.
 - b. Measures adopted by countries to protect the NPO sector from terrorist abuse should not disrupt or discourage legitimate charitable activities. Rather, such measures should promote transparency and engender greater confidence in the sector, across the donor community and with the general public that charitable funds and services reach intended legitimate beneficiaries. Systems that promote achieving a high degree of transparency, integrity and public confidence in the management and functioning of all

NPOs are integral to ensuring the sector cannot be misused for terrorist financing.

- c. Measures adopted by countries to identify and take effective action against NPOs that either are exploited by or actively support terrorists or terrorist organisations should aim to prevent and prosecute as appropriate terrorist financing and other forms of terrorist support. Where NPOs suspected of or implicated in terrorist financing or other forms of terrorist support are identified, the first priority of countries must be to investigate and halt such terrorist financing or support. Actions taken for this purpose should to the extent reasonably possible avoid any negative impact on innocent and legitimate beneficiaries of charitable activity. However, this interest cannot excuse the need to undertake immediate and effective actions to advance the immediate interest of halting terrorist financing or other forms of terrorist support provided by NPOs.
- d. Developing co-operative relationships among the public, private and NPO sector is critical to raising awareness and fostering capabilities to combat terrorist abuse within the sector. Countries should encourage the development of academic research on and information sharing in the NPO sector to address terrorist financing related issues.
- e. A targeted approach in dealing with the terrorist threat to the NPO sector is essential given the diversity within individual national sectors, the differing degrees to which parts of each sector may be vulnerable to misuse by terrorists, the need to ensure that legitimate charitable activity continues to flourish and the limited resources and authorities available to combat terrorist financing in each jurisdiction.
- f. Flexibility in developing a national response to terrorist financing in the NPO sector is also essential in order to allow it to evolve over time as it faces the changing nature of the terrorist financing threat.

Definitions

4. For the purposes of SR VIII and this interpretative note, the following definitions apply:
 - a. The term *non-profit organisation* or *NPO* refers to a legal entity or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of “good works”.
 - b. The terms *FIU*, *legal arrangement* and *legal person* are as defined by the FATF Forty Recommendations (2003) (*the FATF Recommendations*).
 - c. The term *funds* is as defined by the Interpretative Note to FATF Special Recommendation II.
 - d. The terms *freezing*, *terrorist* and *terrorist organisation* are as defined by the Interpretative Note to FATF Special Recommendation III.
 - e. The term *appropriate authorities* refers to competent authorities, self-regulatory bodies, accrediting institutions and other administrative authorities.
 - f. The term *beneficiaries* refers to those natural persons, or groups of natural persons who receive charitable, humanitarian or other types of assistance through the services of the NPO.

Measures

5. Countries should undertake domestic reviews of their NPO sector or have the capacity to obtain timely information on its activities, size and other relevant features. In undertaking these assessments, countries should use all available sources of information in order to identify features and types of NPOs, which by virtue of their activities or characteristics, are at risk of being misused for terrorist financing¹⁶. Countries should also periodically reassess the sector by reviewing new information on the sector's potential vulnerabilities to terrorist activities.
6. There is a diverse range of approaches in identifying, preventing and combating terrorist misuse of NPOs. An effective approach, however, is one that involves all four of the following elements: (a) Outreach to the sector, (b) Supervision or monitoring, (c) Effective investigation and information gathering and (d) Effective mechanisms for international co-operation. The following measures represent specific actions that countries should take with respect to each of these elements in order to protect their NPO sector from terrorist financing abuse.
 - a. *Outreach to the NPO sector concerning terrorist financing issues*
 - (i) Countries should have clear policies to promote transparency, integrity and public confidence in the administration and management of all NPOs.
 - (ii) Countries should encourage or undertake outreach programmes to raise awareness in the NPO sector about the vulnerabilities of NPOs to terrorist abuse and terrorist financing risks, and the measures that NPOs can take to protect themselves against such abuse.
 - (iii) Countries should work with the NPO sector to develop and refine best practices to address terrorist financing risks and vulnerabilities and thus protect the sector from terrorist abuse¹⁷.
 - (iv) Countries should encourage NPOs to conduct transactions via regulated financial channels, wherever feasible, keeping in mind the varying capacities of financial sectors in different countries and in different areas of urgent charitable and humanitarian concerns.
 - b. *Supervision or monitoring of the NPO sector*

Countries should take steps to promote effective supervision or monitoring of their NPO sector. In practice, countries should be able to demonstrate that the following standards apply to NPOs which account for (1) a significant portion of the financial resources under control of the sector; and (2) a substantial share of the sector's international activities.

- (i) NPOs should maintain information on: (1) the purpose and objectives of their stated activities; and (2) the identity of the person(s) who own, control or direct their activities, including senior officers, board members and trustees. This information should be publicly

¹⁶ For example, such information could be provided by regulators, tax authorities, FIUs, donor organisations or law enforcement and intelligence authorities.

¹⁷ The FATF's Combating the Abuse of Non-Profit Organisations: International Best Practices provides a useful reference document for such exercises.

available either directly from the NPO or through appropriate authorities.

- (ii) NPOs should issue annual financial statements that provide detailed breakdowns of incomes and expenditures.
- (iii) NPOs should be licensed or registered. This information should be available to competent authorities¹⁸.
- (iv) NPOs should have appropriate controls in place to ensure that all funds are fully accounted for and are spent in a manner that is consistent with the purpose and objectives of the NPO's stated activities.
- (v) NPOs should follow a "know your beneficiaries and associate NPOs¹⁹" rule, which means that the NPO should make best efforts to confirm the identity, credentials and good standing of their beneficiaries and associate NPOs. NPOs should also undertake best efforts to document the identity of their significant donors and to respect donor confidentiality.
- (vi) NPOs should maintain, for a period of at least five years, and make available to appropriate authorities, records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organisation. This also applies to information mentioned in paragraphs (i) and (ii) above.
- (vii) Appropriate authorities should monitor the compliance of NPOs with applicable rules and regulations²⁰. Appropriate authorities should be able to properly sanction relevant violations by NPOs or persons acting on behalf of these NPOs²¹.

c. *Effective information gathering and investigation*

- (i) Countries should ensure effective co-operation, co-ordination and information sharing to the extent possible among all levels of appropriate authorities or organisations that hold relevant information on NPOs.
- (ii) Countries should have investigative expertise and capability to examine those NPOs suspected of either being exploited by or actively supporting terrorist activity or terrorist organisations.
- (iii) Countries should ensure that full access to information on the administration and management of a particular NPO (including financial and programmatic information) may be obtained during the course of an investigation.
- (iv) Countries should establish appropriate mechanisms to ensure that when there is suspicion

¹⁸ Specific licensing or registration requirements for counter terrorist financing purposes are not necessary. For example, in some countries, NPOs are already registered with tax authorities and monitored in the context of qualifying for favourable tax treatment (such as tax credits or tax exemptions).

¹⁹ The term associate NPOs includes foreign branches of international NPOs.

²⁰ In this context, rules and regulations may include rules and standards applied by self regulatory bodies and accrediting institutions.

²¹ The range of such sanctions might include freezing of accounts, removal of trustees, fines, de-certification, delicensing and de-registration. This should not preclude parallel civil, administrative or criminal proceedings with respect to NPOs or persons acting on their behalf where appropriate.

or reasonable grounds to suspect that a particular NPO: (1) is a front for fundraising by a terrorist organisation; (2) is being exploited as a conduit for terrorist financing, including for the purpose of escaping asset freezing measures; or (3) is concealing or obscuring the clandestine diversion of funds intended for legitimate purposes, but redirected for the benefit of terrorists or terrorist organisations, this information is promptly shared with all relevant competent authorities in order to take preventative or investigative action.

d. *Effective capacity to respond to international requests for information about an NPO of concern*

Consistent with Special Recommendation V, countries should identify appropriate points of contact and procedures to respond to international requests for information regarding particular NPOs suspected of terrorist financing or other forms of terrorist support.

Appendix C

Draft Non-Profit Organizations (Jersey) Law 200-



Jersey

NON-PROFIT ORGANIZATIONS (JERSEY) LAW 200-

REPORT

Explanatory Note

This Law will implement in Jersey Special Recommendation VIII of the Financial Action Task Force, which requires countries to enact legislation to combat any possible abuse of Non-Profit Organizations (in this Note and in the Law called NPOs) for terrorist purposes.

The purpose of the Law is not to regulate NPOs but to allow their activities to be monitored.

Article 1 sets out the meaning of certain words used in the Law. The Commission means the Jersey Financial Services Commission, which will be responsible for administering the Law.

Article 2 requires NPOs to be registered if they are established in Jersey or are administered in Jersey and provides how this may be achieved. It is not possible to monitor NPOs that have no presence in Jersey although they may pay money to people in Jersey or solicit support here.

Article 3 requires the Commission to refer an application for the registration of NPOs to the Royal Court for determination if there is any suspicion that the NPO has any terrorist association.

Article 4 requires a NPO to notify the Commission of any change in its registered details.

Article 5 requires NPOs to provide financial statements, to keep financial records and, possibly, to pay an administration fee from time to time.

The Minister may, by Order, exempt certain registered NPOs from these obligations.



Article 6 sets out the Commission's role in assessing the terrorist risk posed by a NPO and provides, in particular, what the Commission must do when it receives a financial statement from a NPO.

Article 7 sets out what is to happen to financial records supplied to the Commission by NPOs.

Article 8 allows the Commission to publish certain statements in respect of NPOs and those posing as registered NPOs. There is a right of appeal against the publication of a statement.

Article 9 requires a register of NPOs to be kept by the Commission and requires the Commission to give to any person who applies the registration number or reference of any NPO on the register and the name and address of the NPO. A NPO must supply certain other registration information to a member of the public if requested to do so.

Article 10 provides how the Commission may or must make information that comes into its hands as a result of administering the Law available to others. It must not otherwise divulge the information.

Article 11 sets out how the Commission is to keep documents supplied under the Law.

Article 12 allows the Commission to amend the registration or reference number of a NPO.

Article 13 allows all NPOs whether or not incorporated to be prosecuted and lists the provisions in respect of terrorism under which NPOs may be prosecuted.

Article 14 makes it an offence for a NPO not to be registered when it should be or for a person or a body of persons to claim to be a registered NPO when it or they are not.

Article 15 makes it an offence to provide false information for the purpose of registering a NPO.

Article 16 makes it an offence for a NPO to fail to supply a financial statement or to keep false financial records.

Article 17 makes it an offence for a person not to give an explanation or to give a false explanation about financial records supplied under the Law. It also makes it an offence for a NPO not to provide information it is required to provide when requested to do so.

Article 18 makes it an offence for a NPO to fail to pay a periodic administration fee within 28 days of it becoming due.

Article 19 allows the Commission to order the deregistration of a NPO in specified circumstances. There is a right of appeal.

Article 20 amends the Financial Services Commission (Jersey) Law 1998 to make it clear that other Laws may impose functions on the Commission.

Article 21 provides for the citation of the Law.

Article 22 provides for the commencement of the Law.

It allows for a period of 28 days for any necessary Orders to be made that will exempt most low risk NPOs from many of the provisions of the Law.

It then allows for a period of 3 months during which it will not be an offence for a NPO not to be registered.

During this period the Commission can undertake the registration of existing NPOs.

If at the end of this period the Commission has not determined any application for registration made by a NPO during that period the NPO will not be guilty of being unregistered.



Jersey

NON-PROFIT ORGANIZATIONS (JERSEY) LAW 200-

Arrangement

Article

PART 1		7
1	Interpretation	7
PART 2		9
2	NPOs must register.....	9
3	Commission may refuse registration.....	10
4	Change of registered information.....	10
5	Obligations of NPOs	10
6	Obligations of the Commission.....	11
7	Financial records	11
8	Public statements.....	11
9	Commission to keep register and certain information to be provided.....	12
10	Supply of information	13
11	Keeping of documents by Commission.....	13
12	Commission may amend registration or reference number of a NPO.....	13
PART 3		13
13	All NPOs may be prosecuted	13
14	Failure of NPO to register and passing off.....	14
15	False registration information	15
16	Offences in respect of financial statements and financial records.....	15
17	Offences in respect of supply of information.....	15
18	Failure to pay administration fee.....	16
PART 4		16
19	Commission may deregister NPOs.....	16
PART 5		17
20	Amendment of Article 5 of the Financial Services Commission (Jersey) Law 1998.....	17
21	Citation.....	18

22 Commencement 18





Jersey

NON-PROFIT ORGANIZATIONS (JERSEY) LAW 200-

A LAW to provide for the registration and monitoring of non-profit organizations.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

PART 1

INTERPRETATION

1 Interpretation

(1) In this Law, unless a contrary intention appears –

“Commission” means the Jersey Financial Services Commission established by the Financial Services Commission (Jersey) Law 1998;

“documents” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its provision or production include references to providing or producing a copy of the information in legible form;

“financial statement”, in respect of a NPO for a particular period, means a statement that –

(a) contains a detailed breakdown of the NPO’s income and expenditure (in each case, with any necessary explanations) during that period; and

- (b) sets out the state of the funds and other assets of the NPO at the end of that period;

“financial records”, in respect of a NPO, means records of both its domestic and international transactions that are sufficient to verify that the funds and other assets of the NPO have been spent in a manner consistent with its purpose, objectives and intended activities as shown in the register;

“funds or other assets” means financial assets and property of every kind, whether tangible or intangible, movable or immovable, however acquired, and includes –

- (a) legal documents or instruments in any form, electronic or digital, that evidence title to, or an interest in, the funds or other assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, or letters of credit; and
- (b) any interest, dividends or other income on or value accruing from or generated by the funds or other assets;

“Minister” means the Minister for Home Affairs;

“NPO” means a person or any body of persons corporate or unincorporated that primarily engages in raising or disbursing funds –

- (a) for purposes such as charitable, religious, cultural, educational, social or fraternal purposes; or
- (b) for the carrying out of other types of “good works”;

“published” means –

- (a) in respect of a fee payable by virtue of this Law, published by the Commission in accordance with Article 15(5) of the Financial Services Commission (Jersey) Law 1998; and
- (b) in any other case, published by the Commission in a manner likely to bring it to the attention of those affected,

and “publish” shall be interpreted accordingly;

“register” means a register kept by the Commission for the purposes of this Law;

“Terrorism Law” means the Terrorism (Jersey) Law 2002;

“Terrorism Orders” means –

- (a) the Terrorism (United Nations Measures) (Channel Islands) Order 2001; and
- (b) the Al-Qa’ida and Taliban (United Nations Measures) (Channel Islands) Order 2002,

of the United Kingdom.

- (2) The States may amend a definition in paragraph (1) by Regulations.

PART 2**REGISTRATION AND OBLIGATIONS OF A NPO****2 NPOs must register**

- (1) A NPO must be registered if –
 - (a) it is established in Jersey; or
 - (b) it is administered in or from Jersey,whether or not it carries on any activity in Jersey.
- (2) A person or any body of persons corporate or unincorporated that is not a NPO registered under this Law must not hold himself, herself or itself out as being a NPO registered under this Law.
- (3) Except as permitted by paragraph (5) and Article 3, the Commission must register a NPO on receipt of –
 - (a) a completed application form in a form provided or approved for the purpose by the Commission;
 - (b) any published application fee; and
 - (c) if the NPO is an existing NPO, whether in Jersey or elsewhere, its most recent financial statement (if any) in respect of any period before the application.
- (4) An application is completed for the purpose of paragraph (3)(a) if it includes –
 - (a) the name or proposed name of the NPO;
 - (b) details of how it may be contacted if it is registered;
 - (c) its purpose, objectives and intended activities;
 - (d) the name and contact details of each person who –
 - (i) will control or direct its activities, or
 - (ii) will be the holder of a prescribed office of the NPO;if it is registered;
 - (e) the structure or intended structure of the NPO (for example, is it or will it be an unincorporated body, a trust, or an incorporated body and, if so, what type of body); and
 - (f) a general indication of the funds it is likely to raise or disburse each year, both within and outwith Jersey.
- (5) Following the submission to the Commission of the information mentioned in paragraphs (3)(c) and (4), the Commission may require the applicant to provide additional information to enable it to assess the extent (if any) to which the NPO could be used to facilitate terrorism.
- (6) The Minister may by Order –
 - (a) exempt a NPO or any class of NPOs from any obligation imposed on a NPO by paragraph (3)(c), or paragraph (4)(d), (e) or (f);

- (b) prescribe in respect of a NPO or any class of NPOs an office that is a prescribed office of the NPO or any class of NPOs for the purpose of paragraph (4)(d)(ii).
- (7) The States may amend this paragraph by Regulations.

3 Commission may refuse registration

- (1) If, on an application for the registration of a NPO, the Commission is of the opinion that the NPO has or may have terrorist associations, the Commission must refer the application to the Royal Court.
- (2) The Court may –
 - (a) order the registration of the NPO; or
 - (b) if it considers that the NPO has or may have terrorist associations, refuse to order its registration.
- (3) The Commission must comply with the order of the Court.

4 Change of registered information

If there is a change in the details provided in respect of a NPO under Article 2(4) (which shall be taken to include the NPO ceasing to undertake any activity mentioned by it in compliance with Article 2(4)(c)), the NPO must give the Commission written notice of the change –

- (a) at the first practical opportunity; but
- (b) in any event, within 28 days of the change.

5 Obligations of NPOs

- (1) Each NPO must prepare and provide to the Commission a financial statement for a period of not more than 18 months –
 - (a) beginning on the date the NPO was registered under this Law; or
 - (b) if the NPO has previously prepared a financial statement, beginning at the end of the period covered by the most recent statement.
- (2) The statement must –
 - (a) be in the published form; and
 - (b) be provided to the Commission within the published period after the end of the period covered by the statement.
- (3) A NPO must keep financial records.
- (4) A NPO must retain those records for at least 5 years.
- (5) A NPO must, upon demand make its financial records available to –
 - (a) the Commission;
 - (b) the Attorney General; or
 - (c) a member of the States of Jersey Police Force.

- (6) A NPO must pay to the Commission any published periodic administration fee.
- (7) The Minister may by Order, exempt a NPO or any class of NPOs from any obligation imposed on a NPO by paragraph (1), paragraph (3), paragraph (4) or paragraph (6).

6 Obligations of the Commission

- (1) It is the role of the Commission to help determine if a NPO is assisting or being used to assist terrorism.
- (2) Accordingly, the Commission –
 - (a) must as soon as practicable after it receives a financial statement from a NPO, consider if it raises any suspicion that the NPO is assisting or being used to assist terrorism; and
 - (b) may otherwise monitor the activities of each NPO.
- (3) If the Commission considers that a NPO is assisting or being used to assist terrorism, it must immediately inform the Attorney General, giving any evidence it has for its suspicions.

7 Financial records

- (1) This Article applies where financial records are provided by a NPO in compliance with a demand made under Article 5(5).
- (2) The person who made the demand may –
 - (a) take copies of the records or extracts from them; and
 - (b) require the person providing them, or anyone who appears to be in possession of relevant information, to provide an explanation of them.
- (3) If original records are provided, they may be retained –
 - (a) for a period of one year; or
 - (b) if within that period proceedings to which the records are relevant are commenced against any person, until the conclusion of those proceedings.

8 Public statements

- (1) If the Commission believes that a person or any body of persons corporate or unincorporated is a NPO that should be registered under this Law it may publish a statement setting out that belief.
- (2) If the Commission believes that a person or any body of persons corporate or unincorporated that is not a NPO registered under this Law is holding himself, herself or itself out as such a NPO, the Commission may publish a statement setting out that belief.

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- (3) If at any time before the Commission publishes a statement under paragraph (1) or paragraph (2) in respect of a person or body of persons it is reasonably practicable for the Commission to serve notice of its intention to do so on the person or, in the case of a body of persons, a person it is satisfied represents the body of persons, the Commission must do so.
 - (4) If the Commission believes that a NPO registered under this Law has failed to comply with its obligation under Article 4 or with any of its obligations under Article 5, it may publish a statement setting out that belief but it shall not do so unless it has given the NPO at least 7 days notice of its intention to do so.
 - (5) A notice under paragraph (3) or paragraph (4) must –
 - (a) give the reasons for publishing the statement;
 - (b) give the proposed or actual date of publication of the statement;
 - (c) contain a copy of the statement;
 - (d) give details of the right of appeal provided by paragraph (6).
 - (6) A person aggrieved by a decision of the Commission to publish a statement may appeal to the Royal Court against the decision.
 - (7) An appeal may be made only on the ground that the decision of the Commission was unreasonable having regard to all the circumstances of the case.
 - (8) An appeal may not be lodged with the Court later than one month after the publication of the public statement.
 - (9) On an appeal the Court may make such interim or final order as it thinks fit, including an order –
 - (a) that the Commission not publish the relevant public statement; or
 - (b) if the public statement has been published, that the Commission issue a further public statement to the effect set out in the order or stop making the statement available to the public.

9 Commission to keep register and certain information to be provided

- (1) The Commission must keep a register for the purposes of this Law.
- (2) If requested to do so by any person, the Commission must tell the person if the name of a NPO appears in the register and, if it does –
 - (a) its registration number or reference; and
 - (b) details of how it may be contacted.
- (3) If requested to do so by any person, a NPO must provide the person with the same information as the NPO provided to the Commission under Article 2(4)(c), (d), (e) and (f).

10 Supply of information

- (1) This Article applies to information that has come into the Commission's possession as a result of it carrying out its functions under this Law.
- (2) The Commission may, with the approval of the Minister supply any information to which this Article applies to any person or any class of persons, whether in Jersey or elsewhere, approved by the Minister.
- (3) The Commission must, when required to do so by the Minister, supply to any person specified by the Minister any information, specified by the Minister, to which this Article applies.
- (4) Except as provided by this Law, the Commission must not otherwise divulge information to which this Article applies.

11 Keeping of documents by Commission

- (1) A document delivered to the Commission under this Law may be kept by the Commission in any form that is capable of being reproduced in a legible form.
- (2) The Commission is to be taken to have complied with an obligation to keep a document delivered to it under this Law if it has complied with paragraph (1) in respect of the document.
- (3) The Commission may destroy a document delivered to the Commission under this Law if –
 - (a) the Commission has recorded and kept the information in it in accordance with paragraph (1); or
 - (b) it relates solely to a NPO that has not existed for more than 10 years.

12 Commission may amend registration or reference number of a NPO

The Commission may, for good cause, change the registration or reference number of a NPO.

PART 3**OFFENCES****13 All NPOs may be prosecuted**

- (1) Any NPO, whether it is a person or any body of persons corporate or unincorporated, may –
 - (a) be prosecuted; and
 - (b) have its funds and other assets frozen under the Terrorism Orders or restrained or forfeited under the Terrorism Law.

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- (2) Accordingly, any NPO may be prosecuted for an offence under the following provisions of the Terrorism (United Nations Measures) (Channel Islands) Order 2001 –
 - (a) article 4 - collection of funds for the purpose of terrorism;
 - (b) article 5 - making funds available for terrorism purposes;
 - (c) article 6(7) - facilitating an activity prohibited under article 4 or article 5.
 - (3) Also any NPO may be prosecuted for an offence under the following provisions of the Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002.-
 - (a) article 3 - supply of restricted goods;
 - (b) article 4 - exportation of restricted goods to listed persons;
 - (c) article 5 - provision of certain technical assistance or training;
 - (d) article 6 - use of ships, aircraft and vehicles: restricted goods, technical assistance and training;
 - (e) article 7 - making funds available to Usama bin Laden and associates;
 - (f) Article 8(9) - contravention of a direction under article 8(1);
 - (g) article 9 - facilitation of activities prohibited under article 7 or article 8(9).
 - (4) Also any NPO may be prosecuted for an offence under the following provisions of the Terrorism Law –
 - (a) Article 13 - support of a proscribed organization;
 - (b) Article 15 - fund-raising for the purposes of terrorism;
 - (c) Article 16 - use of property for the purposes of terrorism;
 - (d) Article 17 - funding arrangements for the purposes of terrorism;
 - (e) Article 18 - laundering terrorist property;
 - (f) Article 52 - possession for terrorism purposes;
 - (g) Article 53 - collection of information useful for terrorism.
 - (5) In its application to NPOs, Article 20 of the Terrorism Law shall have effect as if in Article 20(1)(b) “employment” included work undertaken on behalf of a NPO on a voluntary or an unpaid basis.

14 Failure of NPO to register and passing off

- (1) A NPO that is not registered is guilty of an offence and is liable to a fine if –
 - (a) it is established in Jersey; or
 - (b) it is administered in or from Jersey,whether or not it carries on any activity in Jersey.
- (2) A person or any body of persons corporate or unincorporated is guilty of an offence and is liable to a fine if, not being a NPO registered under this

Law, the person or body holds himself, herself or itself out as being such a NPO.

15 False registration information

- (1) A NPO or person is guilty of an offence and is liable to a fine if when supplying information for the purposes of Article 2(4) (registration of a NPO), Article 2(5) (additional information on the registration of a NPO) or Article 4 (change of registration details) the NPO or person supplies information that the NPO or person knows or reasonably ought to know is false or misleading in a material way.
- (2) A NPO is guilty of an offence and is liable to a fine if when required by Article 4 to give the Commission written notice of any change in the details provided in respect of the NPO under Article 2(4), it fails to do so.

16 Offences in respect of financial statements and financial records

- (1) A NPO is guilty of an offence and is liable to a fine if –
 - (a) it fails to provide a financial statement to the Commission in accordance with Article 5(1);
 - (b) it provides to the Commission, in purported compliance with Article 5(1) a financial statement that it knows or reasonably ought to know is false or misleading in a material way;
 - (c) it fails to keep financial records as required by Article 5(3);
 - (d) it keeps, for the purpose of Article 5(3), financial records that it knows or ought reasonably to know are false or misleading in a material way;
 - (e) it fails to retain financial records for 5 years as required by Article 5(4);
 - (f) it fails to make financial records available to the Commission, the Attorney General or a member of the States of Jersey Police Force when required to do so under Article 5(5); or
 - (g) it makes available to the Commission, the Attorney General or a member of the States of Jersey Police Force, in purported compliance with Article 5(5), financial records that it knows or ought reasonably to know are false or misleading in a material way.
- (2) In paragraph (1) “financial records”, in respect of a NPO, means the financial records of the NPO created after the NPO was registered under this Law.

17 Offences in respect of supply of information

- (1) A person is guilty of an offence and liable to a fine of level 5 on the standard scale if, when required under Article 7(2)(b) to provide an explanation of a financial record, the person –

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- (a) fails, without reasonable excuse, to provide the information; or
 - (b) in purported compliance with the requirement, provides an explanation that is false or misleading in a material way.
- (2) A NPO is guilty of an offence and liable to a fine of level 5 on the standard scale if, when requested under Article 9(3) to provide information, the NPO –
- (a) fails, without reasonable excuse, to provide the information; or
 - (b) in purported compliance with the request, provides information that is false or misleading in a material way.

18 Failure to pay administration fee

A NPO is guilty of an offence and is liable to a fine of level 2 on the standard scale if it fails, without good cause, to pay a published periodic administration fee within 28 days of it becoming due.

PART 4

DEREGISTRATION OF A NPO

19 Commission may deregister NPOs

- (1) The Commission may remove the name of a NPO from the register if –
- (a) the Royal Court makes a forfeiture order in respect of the funds and other assets of the NPO;
 - (b) the NPO has been convicted of an offence under this Law, the Terrorism Orders or the Terrorism Law;
 - (c) the NPO has persistently failed to comply with any of its obligations under Article 4 or Article 5; or
 - (d) the Commission is satisfied that the NPO no longer exists or is not carrying out and is not likely to carry out the activity specified in the register in respect of the NPO.
- (2) In so far as it is reasonably practical for it to do so, the Commission must serve notice of its intention to remove the name of a NPO from the register on –
- (a) the NPO; or
 - (b) any person who constitutes or constituted the NPO; or
 - (c) if a body of persons constitutes or constituted the NPO, any person the Commission is satisfied represents that body of persons.
- (3) A notice under paragraph (2) must –
- (a) give the reason why the Commission considers the name of the NPO should be removed from the register;
 - (b) give the proposed or actual date of its removal;

- (c) state that submissions may be made to the Commission on why the name of the NPO should not be removed from the register; and
 - (d) give details of the right of appeal provided by paragraph (6).
- (4) Unless the notice provides otherwise, the Commission may remove the name of the NPO from the register 28 days after the service of the notice unless, on appeal being made under this Article, the Royal Court orders otherwise, whether before or after the determination of the appeal.
- (5) If the Commission finds that it is not reasonably practical to serve a notice under paragraph (2), the Commission may remove the name of the NPO from the register at any time but must restore it to the register if, on appeal being made under this Article, it is ordered to do so by the Royal Court whether before or after the determination of the appeal.
- (6) Any person aggrieved by the removal or intended removal of the name of a NPO from the register under this Article may appeal to the Royal Court on the grounds that its removal was or would not be reasonable in all the circumstances.
- (7) The appeal must be made –
 - (a) within the period of 28 days following the service of the notice under paragraph (2); or
 - (b) if no notice is served under that paragraph, within the period of 28 days following the name of the NPO being removed from the register,or such longer period as the Royal Court may allow.
- (8) On the appeal, the Royal Court may –
 - (a) confirm the decision of the Commission to remove the name of the NPO from the register;
 - (b) order the Commission not to remove the name of the NPO from the register or, as the case may be, to restore the name of the NPO to the register; or
 - (c) order the Commission to take such other action as the Court considers appropriate in the circumstances.
- (9) In this Article, “forfeiture order” has the same meaning as in Schedule 3 to the Terrorism Law.

PART 5

MISCELLANEOUS

20 Amendment of Article 5 of the Financial Services Commission (Jersey) Law 1998

There is added at the end of Article 5 of the Financial Services Commission (Jersey) Law 1998 the following paragraph –

- “(3) The Commission shall have such other functions as are conferred on it by any other Law or enactment.”.

21 Citation

This Law may be cited as the Non-Profit Organizations (Jersey) Law 200-.

22 Commencement

- (1) This Law, other than Article 14(1), shall come into force 28 days after it is registered
- (2) Article 14(1) shall come in force 3 months after the rest of the Law has come into force.
- (3) It shall be a defence for a NPO charged with an offence under Article 14(1) for the NPO to show –
 - (a) that it had made an application to the Commission for registration under Article 2 prior to Article 14(1) coming into force; and
 - (b) that at the time of the alleged offence the application had not been determined by the Commission or withdrawn.

